

January 19, 2008

**To: Members of the Rules Committee**  
**From: Bert Robinson, Sunshine Reform Task Force**  
**Re: Response to Police Record Work Plan**

With a few minor exceptions, the police records work plan largely envisions maintaining the status quo in terms of public information provided by the San Jose Police Department. That would be an unfortunate outcome for a process that began with a commitment from the San Jose City Council for greater openness.

As Rules Committee members are well aware, the San Jose Police Department has not had a strong record of or reputation for transparency. There have been some improvements over the past year. But more recently, as the department has reacted to disclosures about its use of public drunkenness laws, its reputation has eroded further, and its credibility has been damaged. What is needed now is a declaration for change.

In the following memo, I will provide specific responses to some of the points in the staff transmittal. Some of the staff's arguments seem to rest on misconceptions; others do not respond to my understanding of the committee's direction. But at this late date, arguing over such matters seems increasingly fruitless. Either the San Jose City Council is dedicated to more openness on the part of the police department, or it is not. Absent strong direction from the city's political leaders, the current opaque atmosphere surrounding police activity seems likely to continue.

The numbers in the following analysis refer to the numbers used in the staff memo itself. I have not commented on every point

I. Though the negotiations were much more difficult than I had anticipated, the changes in report writing procedure ultimately agreed to by the department should improve somewhat the scant information often delivered to the public about police incidents and arrests. I appreciate the department's willingness to take some steps toward increased openness. However, I must note that in my judgment the proposed procedures do not exceed the requirements of existing law. Instead, we have arrived at a definition of the "factual circumstances" of an arrest or incident that is more in keeping with the spirit of the vaguely-worded California Public Records Act than the department's past practice – and closer to the level that more progressive police departments already provide.

III. I have not seen the changes to the duty manual or the guidelines for front counter personnel, and would appreciate the chance to review them.

IV. It appears that city staff has either a different understanding of the Rules Committee's direction on this issue than do I, or a very different understanding of the United States Supreme Court's decision in the *United Reporting* case than does the Mercury News. The Rules Committee asked whether there is a legal basis under which the city could provide greater access to certain records to the news media than it does to other parties. The California Public Records Act (Sec. 6254f.3) offers such enhanced access to the media when it comes to certain information about crime suspects and victims. In the *United Reporting* case, the Supreme Court turned back a challenge to that section of the law. The staff memo quotes a section of the decision that is off point to that conclusion. The key point is that the city can greater access to law enforcement information to the media and certain others than it does to the general public, if it chooses to do so.

VI. It is difficult to discern the staff's position from this section. The department, which received national attention in 1999 when it offered the first of what it promised were annual vehicle stop

reports, seems now to be contemplating doing less than it once promised, rather than improving matters as community members have asked. Its focus is on the complications of producing the reports, rather than the importance of the information delivered to the public. The section does not clearly state the department's position on logging pedestrian stops, which is a matter of great community concern.

As an aside, in its last paragraph the staff conveys an apparent misunderstanding of racial profiling. Racial profiling is an issue involving an officer's impressions and actions. It is not concerned with the ethnic self-identification of individuals who interact with the police.

VII. I believe the Rules Committee was specifically interested in practices in the cities of El Paso and Honolulu because of their ranking above San Jose in the recent "Safe Cities" survey. I am not aware of any research which has established a connection between public information policies and crime rates. Nevertheless, it is interesting to note that the practices in Hawaii and Texas appear to provide the public more information than is currently provided in San Jose. As recounted by the staff report, Honolulu states that it will release a police report when the case is closed; the SJPd does not do so and has expressed unwillingness to establish such a policy. The Texas Public Information Act is structured similarly to the proposal devised by the Sunshine Reform Task Force: Information is public unless its release would endanger an investigation. I obtained an incident report from the Dallas Police Department as part of my research for the Sunshine Reform Task Force.

VIII. The department's primary objection to providing report form 2 or 3 at the time of a criminal complaint appears to be that it does not currently keep copies of the reports after it redacts them. Given the importance of public disclosure, it seems a simple matter to change the department's record retention process. While the DA's office often places redacted reports in court files, there is no legal requirement for it to do so, nor does the city of San Jose have the power to place such a requirement on the DA. The City can, however, direct its own police department.

IX. The staff analysis does not respond to the proposal that the Rules Committee be given explicit authority to weigh the balance of public interests and authorize release of police records.

X. This response appears to conflict with the department's earlier contentions that the task force proposal would threaten reports from other agencies in its possession. It does, however, support the task force's understanding.

XI. Having reviewed again the form for the force response report, I am at a loss to see what "sensitive information" about the officer and arrestee is included. The personal information in these reports appears to be far less than what is already required to be released by the Public Records Act. The reports do contain specific information about force incidents beyond what the department currently releases, but it is information that describes the incident itself.